IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 358 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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TRIBHOVANBHAI KUNVARJIBHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 358 of 2000

MR DAXESH T DAVE for Petitioner No. 1

MR BD DESAI PUBLIC PROSECUTOR for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/01/2002

ORAL JUDGEMENT

#. This is an application in revision under Section 397 of the Criminal Procedure Code, 1973 challenging the judgment and order dated 1.4.2000 recorded by the learned

Additional Sessions Judge, Panchmahal at Godhra in Criminal Revision Application No.92/1999 setting aside the judgment and order below Application Ex.5 in Criminal Case No.824/1996 passed by the learned Magistrate who had dismissed the said application for the discharge of the accused. By the said order, the learned Additional Sessions Judge granted the Revision Application and directed that the original accused person be discharged.

#. Feeling aggrieved by the said judgment and order of the learned Additional Sessions Judge, Panchmahal at Godhra the applicant has preferred this application in revision before this Court. It has been mainly contended that the learned Judge has not properly appreciated the factual and legal aspect of the case and has not considered the material placed before him. Therefore, the judgment and order of the learned Judge are erroneous and deserve to be quashed and set aside.

#. Rule was issued and served upon the respondents. I have heard the learned advocate for the parties and have perused the papers. The facts leading to this Revision Application may briefly stated as follows.

#. That a motor accident took place on 14.1.1996 and a Motor Accident Claim Petition was filed on 23.3.1996 by the 2nd respondent - original accused stating that his son Vijay has died on account of accidental injuries received by him in the said motor accident. The applicant contends that in fact his son Devji ( i.e. son of the applicant herein) has died in the said accident and the 2nd respondent has made a false show that his son has died in the said accident and has collected the amount of compensation paid by the Gujarat State Road Transport Corporation, since the bus involved in the accident belonged to the said Corporation. The applicant has contended that a false case was made out by the 2nd respondent and has collected the said amount of compensation and has thereby committed offences punishable under Section 406 and 420 of the Indian Penal Code.

#. The 2nd respondent had applied before the learned Magistrate for his discharge from the said case unsuccessfully and, therefore, he preferred the aforesaid Criminal Revision Application in which the learned Additional Sessions Judge has passed an order for discharge of the said respondent from the said case.

#. The learned advocate for the applicant has argued at

length that in fact Devjibhai had died in the said accident and he had shown postmortem note showing that Devji @ Dinesh has died in the said accident and postmortem of that boy was carried out by the Medical Officer.

#. At the same time, it is to be considered that the 2nd respondent never contended that Devji was his son who died in the said accident. The 2nd respondent has contended by filing of the said Motor Accident Claim Petition No.253/1996, that his son Vijay has died in the said accident as he was travelling in the said S.T.Bus. The learned Tribunal has also found that there is some sort of dispute as to whether the son of the present applicant died in the said accident or whether the son of the 2nd respondent died in the said accident. Therefore, while passing an order under Section 140 of the Motor Vehicle Act, 1988 the learned Tribunal has protected the interest of the applicant as well as of the 2nd respondent by observing in its order dated 1.1.1998 that the amount of Rs.50,000/- will be kept intact with the tribunal and the same shall be disbursed on the strength of the judgment and decree that may be passed in Regular Civil Suit No.191/1997 pending between the applicant and the second respondent.

#. This shows that a Civil Suit is already pending with respect to above claim and interim award is also made subject to the final decision in the said Civil Suit. This shows that the interest of the present applicant as well as of the 2nd respondent has been protected by the Tribunal also.

#. So far as the Tribunal is concerned, there is nothing on record to show that the contentions made by the 2nd respondent regarding the death of his son Vijay is false and fabricated. After all the 2nd respondent will succeed in case if he proves that his son Vijay died in the said accident and that he was entitled to receive the amount of compensation. Moreover, as said above, there is nothing on record to show that Vijay i.e. son of 2nd respondent had died in the said accident. There is no further material on record to substantiate the said case of the 2nd respondent placed before the learned Tribunal. In that view of the matter the learned Additional Sessions Judge cannot be considered to have committed illegality in discharging the 2nd respondent by observing in the said order that there is a civil dispute between the parties and there is no ingredient of criminal offence. The said decision and finding of the learned Additional Sessions Judge do not appear to be illegal on

the basis of the record as said above. Ultimately, the Civil Suit will decide the fate of the parties. In that view of the matter, when the order in question is not illegal on the face of it, it is not open to this Court to interfere with the said order.

##. For the aforesaid reasons this Revision Application is dismissed. Rule is discharged.

( D. P. BUCH, J.)
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